



Response to

Consultation on creating a modern framework for industrial relations

2nd December 2024

Introduction

The emergence and rapid growth of the well-functioning umbrella market has been a positive contributor to UK growth, productivity and wealth. Compliant *bona fide* umbrellas provide certainty and security to the workers engaged by them, ensuring that they receive the full protections required by employment law, that their tax affairs are simplified, and all required taxes are remitted to HMRC.

The Freelancer & Contractor Services Association (FCSA) is the UK's leading professional membership body dedicated to raising standards and promoting supply chain compliance for the temporary labour market. Our members provide umbrella employment, self-employed services, accountancy, and business support solutions to the contingent workforce.

At time of writing FCSA has more than 70 Accredited Members who collectively represent c210,000 workers engaged as employees, making them, collectively, one of the largest employers in the UK. FCSA members alone collect c£6bn in taxes and NICs which are timeously remitted to HMRC.

FCSA has worked extensively with government and other stakeholders to promote the highest possible standards in the industry, most recently working with HMRC across a number of areas including the off-Payroll Working Forum, providing labour market intelligence and umbrella regulation advice to DBT bodies such as Labour Market Enforcement and Employment Agency Standards.

It has also assisted Parliament, giving evidence to the All-Party Parliamentary Loan Charge and Taxpayer Fairness Group and the House of Lords Finance Sub-Committee as well as being an expert advisor to the DBT-supported JobsAware initiative, the Better Hiring Institute.

FCSA continues to promote compliance within the sector for the benefit of individual workers, HM Government, and the supply chain. It welcomes the opportunity to support DBT in this consultation.

Response

The FCSA is broadly in support of the Government's proposals, and we recognise the right for workers to engage in industrial action where it is considered as the last resort, if it is clear that pay and conditions being awarded are subpar. However, this engagement with industrial action must also work in tandem with employment market flexibility in the temporary work sector, recognising that there is a significant proportion of the economy that enjoys the benefits of flexible work and should not be hampered by industrial action.

The FCSA is a membership body for businesses who administer and act as employment intermediaries of temporary workers, largely freelancers, contractors, and other staff that choose to operate through umbrella companies. Whilst umbrella companies are the legal employer for the purposes of the temporary worker chain, they do not set the pay and conditions. This is the role of the end client who requires the temporary or agency worker being placed for an assignment or contract, in the same way that it will be responsible for setting the pay and conditions for its permanent staff. As such umbrellas do not have direct engagement with union representatives, nor is it appropriate for our members to get involved with employment disputes over pay and conditions. We do not, therefore, have any strong feelings about the mechanisms through which industrial action is called and are broadly content with the principles and processes set out in the consultation.

We do, however, want to make clear that any proposed changes to the industrial relations framework have properly considered the role temporary and agency staff play in wider industrial relations. Temporary workers comprise around 800,000 to 1 million total members of the workforce, many of whom are not unionised due to their frequency of role change. Therefore, we still feel it important that these workers are considered when thinking about wider transformations in the industrial relations landscape – for instance those students who prefer the flexibility of a zero hours contract.

Given that pay and conditions are set by the end user, any disputes and negotiations would be dealt with between the end user and the worker. In the event that an improvement in the employment package has been achieved through collaborative and constructive negotiations, then under the Agency Worker Regulations (AWR), umbrella workers who are placed during that time will also be entitled to that same improvement. This is not applicable to contractors who work out of their own licensed company.

The responsibility to communicate this to the worker is on the end user but there is no legal obligation to share this news. Moreover, the chain of communication between the end user, the employment business and the worker – and even the umbrella company – is often fractured. Under the AWR, umbrella companies are obliged to ask about the total employment package on offer after 12 weeks, and then again at 12 months, so that it can be passed on to the employees on their books. Therefore, should there be an improvement that materialises outside of that legal window, and the end user chooses not to communicate that to the worker, there are cases where the worker will be experiencing a very different package of rights.